

§ 49.10-15

33 CFR Ch. I (7-1-09 Edition)

(7) That the Commandant deems it to be in the best interest of the incompetent.

(b) In the event of termination of payments under paragraphs (a)(2), (4), (5), or (7) of this section, the Commandant may, if deemed appropriate, appoint a successor trustee or trustees. The successor trustee or trustees, so appointed, shall comply with the provisions of the regulations and instructions in this part issued thereunder, and do all acts in the manner required of the original trustee or trustees.

§ 49.10-15 Final accounting by trustee.

The trustee or trustees, when payments, hereunder are terminated, shall file a final account with the said Commandant. Thereupon, the trustee or trustees will be discharged and the surety released. In event of death or disability of the trustee, the final accounting will be filed by his legal representative.

Subpart 49.15—Additional Instructions

§ 49.15-1 Implementing instructions.

The Commandant is hereby authorized to issue such instructions not in conflict with the regulations in this part as may be necessary from time to time to give full force and effect thereto.

PART 50—COAST GUARD RETIRING REVIEW BOARD

Sec.

50.1 Establishment and duties of Board.

50.2 Composition of Board.

50.3 Request for review.

50.4 Presentation of case.

50.5 Action by the Board.

50.6 Notification of final action.

AUTHORITY: Sec. 8, 18 Stat. 127, as amended, sec. 302, 58 Stat. 287, as amended; 14 U.S.C. 92, 38 U.S.C. 693i.

NOTE: For the text of waivers of navigation and vessel inspection laws and regulations, see Part 19 of this chapter.

§ 50.1 Establishment and duties of Board.

(a) A Retiring Review Board, referred to in this part as the Board, is hereby established in the Coast Guard.

(b) It will be the duty of the Board to review, at the request of any Coast Guard officer retired or released to inactive service, without pay, for physical disability, pursuant to the decision of a retiring board, the findings and decision of the retiring board. The term “retired or released to inactive service” includes every kind of separation from the service.

(c) After reviewing the findings and decision of a retiring board the Board will affirm or reverse, in whole or in part, the findings and decision of the retiring board.

(d) In carrying out its duties the Board shall have the same powers as exercised by, or vested in, the retiring board whose findings and decision are being reviewed.

[10 FR 5650, May 17, 1945]

§ 50.2 Composition of Board.

(a) The Board will be composed of five commissioned officers designated for each case from a panel appointed by the Commandant. The senior Coast Guard members of the panel will designate the members of the Board for each case, three of whom shall be officers of the Coast Guard and two of whom shall be officers of the Public Health Service.

(b) The senior Coast Guard member of the Board will be President and the junior Coast Guard member will be Recorder.

(c) The Board will convene at the time and place designated by the President for each case, and will recess and adjourn at his order.

[10 FR 5650, May 17, 1945. Redesignated at 13 FR 7303, Nov. 30, 1948, as amended by CGFR 53-12, 18 FR 2953, May 22, 1953]

§ 50.3 Request for review.

(a) Any officer of the Coast Guard who is retired or released to inactive service, without pay, for a physical disability, pursuant to the decision of a Coast Guard retiring board, may request a review of the findings and decision of the retiring board.

(b) An application requesting a review must be in writing and shall be addressed to the Retiring Review Board, Coast Guard Headquarters,

Coast Guard, DHS

§ 50.5

Washington D.C. 20226. Forms for application for review will be provided upon request.

(c) An application requesting a review shall contain:

- (1) The full name of the applicant;
- (2) The mailing address of the applicant;

(3) A brief statement setting out the basis of the request for review, showing in general the nature of error or inequity believed to have occurred in the findings and decision of the retiring board;

(4) The corrective action requested;

(5) Whether the applicant desires to appear before the Board in person;

(6) Whether the applicant will be represented by counsel, and if so, the name and address of counsel.

(d) No request for review shall be valid, and the Board will not consider an application, unless filed within fifteen years after the date of retirement for disability, or after the effective date of the act of June 22, 1944, whichever is the later.

[10 FR 5650, May 17, 1945. Redesignated at 13 FR 7303, Nov. 30, 1948]

§ 50.4 Presentation of case.

(a) The applicant may present his case:

(1) Solely by written application, or by written application together with any additional written evidence or argument that he may desire to submit;

(2) At a hearing before the Board.

(b) The case of an applicant may be presented by his counsel. The term "counsel" includes members of the bar in good standing, accredited representatives of veterans' organizations recognized by the Veterans' Administration under section 200 of the act of June 29, 1936 (49 Stat. 2031, 38 U. S. C. 101), and any other person approved by the Board.

(c) If an applicant signifies a desire to present his case at a hearing, the Board will give him written notice of the place of his hearing, and of the time, which shall be at least thirty days after the time of mailing the notice.

(d) The Board may, upon its own motion or at the request of the applicant or his counsel, grant a continuance whenever it appears necessary, in the

judgment of the Board, in order to insure a thorough, complete and equitable hearing.

(e) The case of any applicant who fails to appear, either in person or by counsel, after being duly notified of the time and place of the hearing will be decided upon the written application and such other evidence as is available to the Board.

(f) As far as practicable the hearings of the Board will be conducted in accordance with the pertinent instructions contained in Coast Guard Boards, 1935, as amended, except that:

(1) Physical examination of the applicant is not mandatory, but the Board may request that he submit to physical examination by physicians of the Board's choice in any case in which it appears to the satisfaction of the Board to be essential;

(2) The medical members of the Board will not submit a report and will not be subject to examination.

(g) Evidence may be submitted to the Board by oral testimony under oath, or in the form of depositions or affidavits. Witnesses appearing before the Board will be subject to examination or cross-examination, as the case may be, by members of the Board and the applicant or his counsel.

(h) The Board will consider all available service records and all matter adduced by the applicant that bears upon the merits of the case. It will not be restricted by the rules of evidence.

(i) Classified matter of the Coast Guard will not be made available to an applicant or his counsel. The Board will, when it deems it necessary in the interest of justice and compatible with the public interest, make available a summary of relevant classified matter.

(j) The Government will not assume or pay any expenses incurred by an applicant, or by his witnesses or counsel.

[10 FR 5650, May 17, 1945. Redesignated at 13 FR 7303, Nov. 30, 1948]

§ 50.5 Action by the Board.

(a) After a complete and thorough review of the evidence before it the Board will, in closed session, deliberate and make its decision affirming or reversing the findings and decision of the retiring board being reviewed.

§ 50.6

(b) If the Board reverses the findings of the retiring board being reviewed, it will make complete findings, including:

(1) Whether the applicant was incapacitated for active service;

(2) If so, the disability causing the incapacity;

(3) Whether the incapacity is permanent;

(4) Whether the incapacity was the result of an incident of service or incurred in the line of duty;

(5) Whether the incapacity was the result of the applicant's own vicious habits;

(6) In the case of Reserve officers and officers who have served under temporary appointments, when the physical disability was incurred.

(c) The findings and decision of a majority of the Board will constitute the findings and decision of the Board Members who do not concur with the majority may file a minority report.

(d) When the Board has concluded its proceedings in any case the Recorder will prepare a complete record thereof including (1) the application for review (2) a transcript of the hearing, if any (3) affidavits, briefs, and written agreements filed in the case, (4) the findings and decision of the Board, and (5) all other papers and documents necessary to reflect a true and complete record of the proceedings. This complete record will be transmitted to the Commandant for appropriate action.

[10 FR 5650, May 17, 1945. Redesignated at 13 FR 7303, Nov. 30, 1948, and amended at CGFR 53-12, 18 FR 2953, May 22, 1953]

§ 50.6 Notification of final action.

The officer requesting the interview will be notified by letter of the final action taken in the case.

[CGFR 48-73, 13 FR 9333, Dec. 31, 1948]

PART 51—COAST GUARD DISCHARGE REVIEW BOARD

Sec.

51.1 Basis and purpose.

51.2 Authority.

51.3 Applicability and scope.

51.4 Definitions.

51.5 Objective of review.

51.6 Propriety standard of review.

51.7 Equity standard of review.

51.8 Relevant considerations.

33 CFR Ch. I (7-1-09 Edition)

51.9 Discharge review procedures.

51.10 Decisions.

51.11 Records.

AUTHORITY: 10 U.S.C. 1553; Pub. L. 107-296, 116 Stat. 2135.

SOURCE: CGD 81-104, 50 FR 41495, Oct. 11, 1985, unless otherwise noted.

§ 51.1 Basis and purpose.

This part establishes the procedures for review of administrative discharges from the Coast Guard by a Discharge Review Board (DRB) or by the Secretary of the Department, and for the compilation of the record of the DRB determination, made available for public inspection, copying and distribution through the Armed Forces Discharge Review/Correction Board Reading Room.

§ 51.2 Authority.

(a) The Secretary of Homeland Security has the authority to establish a Discharge Review Board (DRB) to review the discharge of a former member of the United States Coast Guard under the provisions of 10 U.S.C. 1553. This part prescribes the establishment and outlines the procedures of the Coast Guard Discharge Review Board. The Secretary retains the authority to review and take final action on the DRB's findings in the following cases:

(1) Those cases in which a minority of the board requests that their written opinion be forwarded to the Secretary for consideration;

(2) Those cases selected by the Commandant to inform the Secretary of aspects of the board's functions which may be of interest to the Secretary;

(3) Any case in which the Secretary demonstrates an interest;

(4) Any case which the President of the board believes is of significant interest to the Secretary.

(b) The Commandant of the Coast Guard is delegated the authority to:

(1) Appoint members to serve on the Discharge Review Board;

(2) Appoint alternates to serve on the DRB in the event that a regularly appointed member is unavailable;

(3) Designate a member as the President of the DRB; and